as a sovereign State if in fact its Ruler was sovereign and independent. The date of that case was 1924.

I hold that upon the first three grounds this application fails.

Ground 4 of this application is that the plaintiff, the Netherlands Indies Government, is stated in the writ to have "its place of business at No. 37 Robinson Road, Singapore;" and ground 5 is that the provisions of Order 2 Rule 4 have not been complied with because that rule requires that the writ shall specify (inter alia) the "place of abode" of the plaintiff. It is not disputed that the writ is wrong in these two respects in that it fails to state where the plaintiff or their duly authorised representative resides, and all that I have to consider is whether it is an irregularity which can be cured by amendment under Order 63 Rule 1.

The only authority which was referred to on this part of the application was *The Assunta*[5] That was a motion to set aside an Admiralty writ in rem upon the ground that the writ was in the name of a firm which did not consist of two or more persons, which contravened the provisions of Order 48A Rule 1 of the White Book. The writ was issued at the suit of "Louis Dreyfus & Co.", and the plaintiff was in fact one person "Louis Dreyfus, 42 Rue du Louvre, Paris, trading as Louis Dreyfus & Co., 194, Bishopsgate Street, London." There the defendants had taken a fresh step in the action, because they had applied for security for costs, and it seems to me that in accordance with Order 70 Rule 2 that alone would have been a sufficient ground for dismissing the application. But upon the main ground which was argued, if upon the face of the writ the words "Louis Dreyfus & Co., as owners" or "Louis Dreyfus, as owner" had appeared, the writ would (according to the former Admiralty practice which the learned President held had not been abrogated by the rule) have been perfectly good. And in the endorsement on the back of the writ the plaintiffs were stated to be suing "as owners" of the goods in question. It was held that in the circumstances the mistake was a mere irregularity, and an amendment was allowed.

Now in the present case if I had held that the suit was wrongly brought in the name of the Netherlands Indies Government, clearly that would have been a radical error which could not be cured by amendment. But the plaintiff's mistake has been that they have contravened Order 2 Rule 4 and Order 4 Rule 1 by stating what purports to be the plaintiff's business address and not the plaintiff's residence. Mr. Hatchard has pointed out that a foreign Government must reside in its own territory, and cannot reside in Singapore. I am not sure that I entirely agree with that as a statement which is wide enough to cover every possible circumstance. But in this case they have a duly authorised agent residing in Singapore. I think that I have to decide whether substantial justice requires this mistake on the part of the defendants to be remedied. I think it does. The application to set aside the writ is refused.

I order (1) that the application to set aside the writ be dismissed.

(2) That plaintiffs be at liberty to amend the writ by deleting the words on the back "whose place of business is at No. 37 Robinson Road, Singapore" and by substituting therefor the words "whose duly authorised representative is Willem de Vries of 3rd floor, K.P.M. Building, Singapore."

(3) Costs of application to be taxed and paid by defendants to plaintiffs, except for the sum of $25 as being agreed costs on grounds 4 and 5 of application.

Order Accordingly.

QUEK THIAM TING AND ANOTHER v. REX.

[App. Crim. Juris. (Brown, J.) November 30, 1946]

Price Control Proclamation, Section 7 (a) and (b)—Price Control (Whisky and Gin) Order, 1946—Selling Scotch Whisky above control price—Ambiguity of charge—Whether commodity in relation to which offence is alleged to have been committed must be strictly proved to be Scotch Whisky.

The first appellant is the father of the second appellant and is the sole proprietor of a shop in Havelock Road where he has held a Retail Liquor Licence for over 10 years. Both appellants were convicted by the District Judge, Singapore, of refusing to sell one bottle of Scotch Whisky under Section 7(b) of the Price Control Proclamation No. 9; and the first appellant was also convicted on two further charges of selling 6 reputed quart bottles of Spey Royal Scotch Whisky on the 13th of June 1946 and 2 reputed quart bottles of Spey Royal Scotch Whisky on the 23rd of June 1946, at a price in excess of the controlled price laid down in the Price Control (Whisky and Gin) Order, 1946. The facts were as follows: On the afternoon of the 3rd July 1946 a Revenue Officer was sent to the shop and asked the second appellant for one bottle of Scotch Whisky. The reply was "I have no such liquor." This having been reported to his superiors, a Customs Officer with an Assistant Supervisor of Customs

called at the shop and searched the stock room at the back of the shop, there being no whisky displayed for sale in the shop itself. In the stock room they found 4 cases and 1 bottle of Dewar's White Label, 1 case and 4 bottles of Gilbey's Spey Royal, and 4 bottles of Black and White. The Stock Book of the shop contained no entry showing any whisky at all. But on the desk in the shop was found another book, kept in Chinese characters, which shewed certain entries regarding the purchase and sale of whisky. This book was put in evidence by the prosecution, and the pages which relate to the entries regarding whisky were translated and marked (for the purpose of the case) A and B. At the top of Page A appeared the words "Spey Royal (large)". On this page there were two entries of the sale of Spey Royal, one on June 13th 1946 of 6 bottles sold for $84.00 and the other on June 23rd 1946 of 2 bottles sold for $34.00. Page "B" was headed "Dewar's Whisky (Large)" and showed that 120 bottles were purchased on 23rd May 1946 and then followed some 12 entries of sales. Both appellants were then taken to the Customs House, and both made statements which they signed.

On the appeal it was argued (i) that the appellants were wrongly charged under paragraph (b) of Section 7 of the Price Control Proclamation (ii) that the Whisky and Gin Order, 1946 is ambiguous as it does not make clear whether the price mentioned is the wholesale or retail price and makes no mention of the price of the bottles in which the Scotch Whisky is sold and (iii) that inasmuch as the Proclamation specifies the price of Scotch Whisky unqualified by any such word as "reputed", the fact that the commodity in relation to which the offence is alleged to have been committed is Scotch Whisky must be strictly proved.

Section 7 of the Price Control Proclamation reads as follows:—

> Any person carrying on a business in the course of which goods of any description are normally sold and who has in his possession a stock of goods of such description who—
>
> (a) falsely denies that he has such goods in his possession, or
>
> (b) refuses, except with the permission of the Price Controller to sell such goods in reasonable quantities,
>
> shall be guilty of an offence against this Proclamation;
>
> Provided that it shall be a good defence to a charge under paragraph (b) of this Section that the accused had reasonable grounds for believing that the purchaser was unable or unwilling to make immediate payment of the price of such goods in cash.

Held, (i) that a conviction under paragraph (a) of Section 7 of the Price Control Proclamation should be substituted for the conviction under paragraph (b);

(ii) that there is no ambiguity in the Whisky and Gin Order, 1946 and that the price fixed in that order is the maximum wholesale price where the whisky is being sold wholesale and is the maximum retail price where the whisky is being sold retail;

(iii) that on the facts in this case the overcharge was such as could not reasonably be represented as the price of the bottle;

(iv) that strict proof of the commodity being Scotch Whisky is not required under the Price Control Proclamation or Orders made thereunder and that the fact that the bottles plainly state that they contain Scotch Whisky distilled in Scotland, the product of Scotland, is sufficient to establish a **prima facie** case that they contain Scotch Whisky.

Cases referred to:—

(1) *The King v. Chapman* (1931) 2 K.B. 606.

(2) *Rex v. Secretary of State for India, Ex parte Ezekiel* (1941) 2 K.B. 169.

(3) *Houston v. Wittner's Pty. Ltd.* (1928) V.L.R. 539; English and Empire Digest, 1940 Supplement p. 13.

(4) *Collin's Arden Products, Ltd. v. Banking Corporation* (1943) 1 K.B. 419.

(5) *Henderson & Turbull Ltd. v. Adair* (1939) Scots Law Times 478.

MAGISTRATE'S APPEAL

D. K. Walters for the Appellants.

A. W. Bellamy (D.P.P.) for the Crown.

Brown J. :—The first appellant is the father of the second appellant, and is the sole proprietor of a shop in Havelock Road where he has held a Retail Liquor Licence for over 10 years. Both appellants were convicted by the learned District Judge of refusing to sell one bottle of Scotch Whisky under Section 7 (b) of the Price Control Proclamation No. 9; and the first appellant was also convicted on two charges of selling 6 reputed quart bottles of Spey Royal Scotch Whisky on 13th of June, and 2 reputed quart bottles of Spey Royal Scotch Whisky on 23rd of June, at a price in excess of the controlled price laid down in the Price Control (Whisky & Gin) Order, 1946.

The appeal is against conviction only, and the facts are not in dispute. On the afternoon of 3rd July a Revenue Officer was sent to the shop and asked the second appellant for one bottle of Scotch Whisky. The reply was "I have no such liquor." This having been reported to his superiors, a Customs Officer with an Assistant Supervisor of Customs called at the shop and searched the stock room at the back of the shop, there being no whisky displayed for sale in the shop itself. In the stock room they found 4 cases and 1 bottle of Dewar's White Label, 1 case and 4 bottles of Gilbey's Spey Royal, and 4 bottles of Black and White. At this point the first appellant, who was absent when the officers arrived, came in. He was asked to produce his Stock Book. The Stock Book contained no entry shewing any whisky at all. But on the desk in the shop was found another book, kept in Chinese characters, which shewed certain entries regarding the purchase and sale of whisky. This book was put in evidence by the prosecution as P3, and the pages which relate to the entries regarding

whisky were translated and marked (for the purpose of the case) A and B. At the top of Page A appear the words "Spey Royal (large)." On this page are the following two entries of the sale of Spey Royal :—

"June 13th: Sold 6 bottles $84.00
June 23rd: Sold 2 bottles $34.00"

These two entries refer to charges 2 and 3 respectively. Page B is headed "Dewars Whisky (large)" and shows that 120 bottles were purchased on 23rd May and then follows some 12 entries of sales. Both appellants were taken to the Customs House, and both made statements which they signed. In the first appellant's statement appear these words: "Most of the Scotch Whisky found in my shop were purchased by Tan Cheng Hean." This man has been employed as a clerk by the first appellant for over 20 years, and, according to him, has been in charge of his liquor business since he was first given a licence over 10 years ago.

With regard to charges 2 and 3 it has been argued on behalf of the first appellant :—

(1) That the Whisky and Gin Order, 1946 is ambiguous, and therefore bad, because
  (a) It does not make clear whether the price mentioned is the wholesale or retail price;
  (b) The Order makes no mention of the price of the bottles in which Scotch Whisky is sold, and that therefore in charging $14 per bottle in the second charge and $17 per bottle in the third there is no evidence that the prices of the whisky exceeded the "$9.50 per reputed quart bottle" fixed by the Order.

Upon the question of ambiguity Mr. Walters has referred me to the case of *The King v. Chapman*[1]. In that case the appellant, who had been convicted of having carnal knowledge of a girl under 16, had set up by way of defence the proviso to section 2 of the Criminal Law Amendment Act, 1922 which says that in the case of man of 23 years of age or under the presence of reasonable cause to believe that the girl was over the age of 16 shall be a valid defence. The accused was aged 23 years and 6 months. Did the proviso cover a man who had passed his 23rd birthday and was in his 24th year? In the case of that statute there was clearly an ambiguity. But in the case of this Order I am unable to see any ambiguity at all. It has been suggested that it is ungrammatical, and that it might have been better drafted. That may be. All that I am concerned with is to construe it; and from whatever angle I look at it I am unable to construe it in any other reasonable way than that the maximum price of Scotch Whisky, whether wholesale or retail, is $9.50 per reputed quart bottle. Mr. Walters puts the ambiguity in this way: "Does the schedule refer to the wholesale or the retail price?" But there is only one price in the Schedule. And as para. 2 of the Order is laying down the maximum "wholesale or retail price," it is to me quite clear that the price of "$9.50 per reputed quart bottle" is the maximum wholesale price, where the whisky is being sold wholesale, and is the maximum retail price, where the whisky is being sold retail. The only other way in which the Order could possibly be construed would deprive it of any sense or meaning. If it is to be construed in that way, then the legislating authority has provided either for the wholesale price or for the retail price (without specifying which) and has omitted to provide for the other. If I were to adopt that construction in preference to the only sensible and reasonable construction I should be breaking one of the cardinal rules of interpretation.

The argument that the Order makes no mention of the price of the bottles in which the whisky is sold might be a sound one if the overcharge was such as could reasonably be represented as the price of the bottle. It is to be observed that this omission has now been remedied by the Whisky and Gin (No. 2) Order 1946 which says that the price is to include the value of the bottle sold. But here the overcharge was $4.50 per bottle in the 2nd charge and $7.50 in the 3rd charge. And it cannot I think seriously be contended that in the appellant's shop whisky bottles (apart from their contents) were being sold at $4.50 and $7.50 per bottle.

Now the ground of appeal which I think is regarded as the substantial ground is in respect of all three charges, and is that the prosecution failed to prove that the liquor of which they were found in possession and refused to supply, and the liquor which they sold at the excessive prices set out in P3, was Scotch Whisky. Mr. Walters contends that inasmuch as the Proclamation specifies the price of Scotch Whisky unqualified by any such word as "reputed", the fact that the commodity in relation to which the offence is alleged to have been committed is Scotch Whisky must be strictly proved. That involves the proposition that what must be proved is

not merely that it is whisky, but that it is whisky which comes from Scotland. He contends that a conviction based on the appearance of the bottles is a conviction lacking the requisite proof, and the fact that there are labels on the bottles which say that the contents are whisky and that it was produced in Scotland proves nothing. He says that it sometimes happens that whisky is illicitly adulterated and he has referred to the case of *Rex v. Secretary of State for India, Ex parte Ezekiel*[2] where Scotch Whisky imported into India was found to have been adulterated, on a large scale and over a protracted period, at an illicit still situate on the premises of the importers. The object of referring to that case was merely in order to shew that such a thing sometimes happens.

His next case was an Australian case of which the report is not available but there is a short note of it in the 1940 Supplement to E. & E. Digest on page 13. The name of the case is *Houston v. Wittner's Pty., Ltd.*[3]. From the Digest the facts of that case appear to be that upon a prosecution against the respondent company for selling adulterated milk the evidence was that an inspector saw in the street a milk-cart bearing the same name and address as the respondents' and purchased from the driver milk which was adulterated. In the absence of the report, and with only a twelve-line note at the bottom of a page of the Digest, it is difficult to know what exactly the evidence was. Who was the driver of the cart? Was he an employee of the respondents? What authority had he to take the cart? Who put the adulterated milk in the cart? Was the cart ordinarily used by the respondents to deliver their milk? All these are questions to which the evidence in the case no doubt provided the answers. But not knowing the evidence it is difficult to make much comment. It seems however to have been held that the evidence was insufficient to establish that the milk cart was the cart of the respondents or that it was being used in the course of the respondent's business or that there was any relationship between the respondents and the driver of the cart. I can see all the difference between that case and the present case. In that case there seems to have been no evidence to connect the respondents with the offence except that the cart bore a name and address which was the same as their name and address. Assuming that it was their cart, in the absence of some evidence to shew that the driver was their driver and acting in the course of his employment with them, there was nothing to connect them with the offence. But in the present case there is no question that if an offence was committed it was the appellant who committed it. The only question is whether the bottles and the labels on the bottles establish a prima facie case that the whisky was Scotch Whisky.

Section 105 of the Spirits Act, 1880, as amplified by section 24 of the Finance Act, 1933, was referred to in support of the argument that in the absence of some provision in the Price Control legislation putting upon the accused the burden of proving that the whisky is not Scotch or in some other way relieving the prosecution of the burden of proving that it is, the fact that it is Scotch must be strictly proved. The argument, as I understand it, is that in the English enactment it was considered necessary to make such a provision in order to ensure that the prosecution would not find themselves in the difficulty which the prosecution is said to be in in this case; and therefore it is necessary in this legislation. Section 105 of the Spirits Act, 1880 says (inter alia) that no spirits may be removed from a distiller's store, or from an Excise warehouse, or from various other places, unless they are acompanied by a permit or certificate. Subsection (9) reads :—

> If any question arises as to the accuracy of the description of spirits in a permit or certificate, the proof that the spirits correspond to the description shall lie on the owner or claimant of the spirits, who shall prove the same by the oaths of two credible witnesses, being skilful and experienced persons competent to decide by examination thereof.

Now in applying for a permit or certificate the applicant has to give a number of particulars such, for example, as the quantity and strength of the spirits for which the permit is required. And it is the essence of an offence under section 105 of the Spirits Act, 1880, that the spirits which are removed are not the spirits which were authorised by the permit or certificate to be removed, i.e. that their particulars do not conform to the particulars authorised. The spirits removed may be of the same nature and in the same number of cases or bottles as the spirits authorised to be removed, for example 6 cases of whisky or gin. But in the absence of expert evidence it is impossible to say whether the 6 cases of whisky or the 6 cases of gin removed correspond in strength, and in the other particulars which the applicant was required to set out in his application, with the description contained in the permit. Clearly some provision for proving that the spirits removed either do or do not correspond with the description in the permit is necessary because

the whole offence is that they do not. And the method of proof adopted by the Legislature has been to put upon the defendant the burden of proving by expert evidence that the spirits do correspond with the description in the permit. But in the case which we are dealing with the essence of the offence is selling a commodity above the controlled price, and (upon the first charge) refusing to sell the commodity, and I cannot think that because in section 105 of the Spirits Act it was necessary to make provision for certain proof of which goes to the essence of the offence it is necessary in this legislation to make provision for similar proof where the essence of the offence is entirely different.

For the same reason I do not think that the case of *Collins Arden Products, Ltd. v. Barking Corporation*[4] assists the appellants. That was a prosecution under section 3 (1) of the Food and Drugs Act, 1938 for selling "to the prejudice of the purchaser" food which was not of the nature, substance or quality of the food demanded. The essence of the offence was that the food was not the food demanded. The food in question was a cordial. It was "non-alcoholic and contained no sugar, but it was sweetened with Saccharin. A public analyst was called who gave it as his opinion that non-alcoholic cordials *should* contain a substantial quantity of sugar." Other analysts were called for the appellants and totally disagreed with the first analyst holding the view that "any pleasant beverage, sweetened or unsweetened, flavoured, and needing dilution" was a cordial. The Justices seem to have preferred the evidence of the first analyst and convicted. But, as was pointed out in the Court of Appeal judgment, they did not address themselves to the proper question to be considered, namely, whether, when a purchaser asked for a cordial he meant, and meant only, a liquid containing alcohol or sugar. The demand of the purchaser, and the selling to his prejudice a food that he did not demand, are of the essence of the offence, and no prima facie case was established because there was no evidence to shew that in demanding a cordial the purchaser was demanding a food which *must* contain either alcohol or sugar.

I was next referred to the case of *Henderson & Turnbull Ltd. v. Adair*[5]. In that case the appellants had been prosecuted under the Merchandise Marks Act, 1887 for applying the false trade description of "Scots Whisky" to whisky which was a blend of 33% Scotch Whisky and 67% Northern Irish Whisky. It is to be observed that the essence of the offence was that the appellants had falsely described their whisky. Clearly the prosecution could not prove their case unless they could prove that what the appellants said was 'Scotch' was in fact not Scotch. That case is authority for saying that Scotch whisky means whisky which is produced in Scotland, and that a person who describes as 'Scotch' a whisky which in the main is produced out of Scotland is falsely describing that whisky. Nobody can doubt, in the light of that authority, that if there had been any evidence in the present case that the whisky had not been produced in Scotland the prosecution case must fail, because the Order lays down the price of Scotch Whisky without any qualifying word. But I cannot see that that authority establishes the proposition that, upon a charge of selling above the controlled price or of refusing to sell Scotch Whisky, a sealed bottle of a well-known proprietary brand of Scotch Whisky, bearing a label which says in effect "this whisky was produced in Scotland" does not establish a *prima facie* case that the contents of the bottle is Scotch Whisky.

The fact that, as both learned Counsel agreed, an analysis of the whisky would not have taken the case much further in surmounting the difficulty of providing that standard of proof which Mr. Walters contends is necessary before a prima facie case can be said to be established, is not perhaps very material to this appeal. If necessary, the difficulty can presumably be surmounted by legislation. But Mr. Walters suggests that as the legislation now stands the requisite standard of proof to establish a prima facie case would be forthcoming if there was evidence of the history of this liquor shewing where it had come from, or if there was the evidence of an expert taster who could give it as his expert opinion that the liquor was whisky which had been distilled in Scotland.

Mr. Bellamy relies for his prima facie case on (1) the first appellant's statement, where he said that most of the Scotch Whisky found in his shop had been purchased by his clerk Tan Cheng Hean, and (2) on the entries in P3.

At this stage it is right that I should point out that during the argument on this appeal learned Counsel and myself were at a disadvantage in that the bottles, which were exhibited in the case as P4 (one bottle of each of the three brands being marked PA, PB and PC respectively) were not present in

Court. For some reason which I do not know, having been exhibited at the trial before the learned District Judge, they were returned to the Customs. I have now had them retrieved and have examined them. They are now in Court.

(1) *Bottle of Dewar's White Label.* The cork is sealed with an unbroken red seal. The label bears the inscription :—

"Finest Scotch Whisky of great age.
John Dewar & Sons Ltd.
Distillers, Perth.

Distilled in Scotland and Bottled in the United Kingdom under Government supervision."

(2) *Bottle of Black & White.* On the top of the bottle and covering the cork is unbroken tinfoil bearing the words "Fine Old Blended Scotch Whisky. Black & White. James Buchanan & Co. Ltd. Glasgow, Scotland." And below that are the words 'Distilled in Scotland. Bottled in United Kingdom under Government supervision." On the label are the words "Black & White. Special Blend of Scotch Whisky. James Buchanan & Co. Scotch Whisky Distillers. Glasgow & London."

(3) *Bottle of Gilbey's Spey Royal.* The cork is sealed with an unbroken red seal. The label bears the words :—

"Gilbey's Spey Royal.
Scotch Whisky
Guaranteed Old and Matured.
Bottled and Guaranteed by
W. & A. Gilbey Ltd.
Glen Spey Distillery.
Rothes. Scotland.
Produce of Scotland."

I find it impossible to agree that these bottles, plainly stating that they contain Scotch whisky, distilled in Scotland, the produce of Scotland, do not (without any other evidence) establish a prima facie case that they contain Scotch whisky as they so plainly state. If I am wrong, then I cannot see that the two pieces of evidence on which Mr. Bellamy relies take the case much further. Because if I am wrong, then what is required is, as Mr. Walters says, some additional evidence of origin or some expert evidence of taste. The two pieces of evidence furnish neither. They only serve to establish that the first appellant or his clerk *thought* that the whisky was Scotch.

I see a distinction between a case of selling Scotch whisky above the controlled price, or of refusing to sell it, under the Price Control legislation, and a case of manufacturing or being in possession of spirituous liquors under some Spirituous Liquors legislation. In the latter case the liquor in question is not a commodity which is in ordinary every day use, available (in normal times) at any shop with a retail liquor licence; it is not sold to the public in bottles of standard sizes and shapes which, with the labels that they bear, are identifiable by any person of ordinary experience as being liquor supplied by a well-known manufacturer; it is not immediately recognizable by the ordinary person from its appearance, smell and taste; and it *is* defined in the relevant statutory enactment. And nothing short of an analysis will establish a prima facie case that the liquor in question is the liquor defined. But in the legislation which is under consideration in this case Scotch whisky is not defined. And where the liquor is contained in a bottle which in appearance is the same as the familiar bottles supplied by a well-known distiller, bearing the name of the well-known distiller on the label, which label is in the familiar form supplied by that distiller, and stating that the whisky is the produce of Scotland, I am unable to see that expert or extrinsic evidence to establish a *prima facie* case of the identity of the whisky is any more necessary than expert or extrinsic evidence would be necessary to prove that any other well-known and recognisable commodity is in fact what it appears to be.

There remains the ground of appeal that the appellants in the first charge were charged under para. (b) of section 7 instead of under para. (a). The words used by the second appellant on being asked for a bottle of Scotch whisky were "I have no such liquor." Mr. Bellamy suggests that in thus falsely denying that he had the commodity he was in fact refusing to supply, and that paragraph (a) is superfluous. I do not take that view. The ordinary meaning of the word 'refuse' is to decline to give. And I think it was in order to cover a case such as this that paragraph (a) was put into the section. Mr. Walters has suggested that if I hold that the appellants were charged under the wrong paragraph (as I do) I should quash the conviction on the first charge. But there are no merits in this ground of appeal and I think it right that I should exercise my powers

under section 310 Criminal Procedure Code and alter the finding on the first charge by substituting a conviction under paragraph (a) for the conviction under paragraph (b).

The Order will be :—

(1) That on the first charge a conviction under paragraph (a) of section 7 of the Proclamation be substituted for the conviction under paragraph (b);

(2) That the convictions on charges 2 and 3 are upheld;

(3) That the sentence on all three charges are maintained.

Order Accordingly.

KUI TEONG v. REX
and
LEE KENG KEH v. REX.

[Criminal Revision (Worley, J.) October 9, 1946]

Municipal Ordinance (Cap. 133) Section 195 (4) (a) and (b)—Hawking in a Prohibited area—Hawking without licence—Whether a person can be convicted of both offences—Itinerant hawker—Forfeiture of goods under Section 195 (6) (c) Cap. 133—Magistrate must make an order as to disposal of property—Criminal Procedure, Sections 310 and 322 (1).

In these cases the two accused were each charged on 2 charges (1) Hawking in a prohibited area in North Bridge Road, an offence under Section 195 (4) (b) of Chapter 133 and (2) Hawking without a licence, an offence under Section 195 (4) (a) of Chapter 133. The accused pleaded guilty and on conviction were each fined $25.00 "on both charges". The Magistrate also made an order for the confiscation of the case property. The accused petitioned to the Supreme Court for revision.

Held, (1) that the Magistrate had made an error in imposing one fine jointly for two separate offences and that the fine must be altered to one of $12.50 for each offence;

(2) that Section 195 (4) of the Municipal Ordinance authorises the prosecution of an unlicensed hawker who acts as an itinerant hawker in a prohibited area under both clauses of the action;

(3) that although the charges in this case speak only of "hawking" and do not include the word "itinerant" which is used in Section 195 (4) of the Municipal Ordinance, they were sufficient to give the accused exact notice of the offences with which they were charged, as the definition of the word "hawker" implies itinerancy;

(4) that when a Magistrate decides to exercise the power of forfeiture under Section 195 (6) (c) of the Municipal Ordinance, he should first inquire what is the nature and value of the goods which he is asked to forfeit and he should make some record of these facts, so that if necessary, the Court of Appeal or the Court acting in revision can judge whether, in all the circumstances, the forfeiture is reasonable;

(5) that the Magistrate should, after making the order confiscating the property, make an order for its disposal and as he had not done so in this case, an order should be made that the property forfeited be sold and the proceeds be divided equally between the Municipal Fund and the accused.

Cases referred to :

(1) *Cheah Boon Hean v. Reg.* 1 S.L.J. 64

(2) *Opium Farmer v. Chua Ah Tong,* 4 Kyshe 188.

(3) *P. P. v. Chean Tin* (1939) 8 M.L.J. 266.

CRIMINAL REVISION.

Mark Morrison for Petitioners.

A. W. Bellamy for the Crown.

Worley, J. in an oral judgment said :—Mr. Morrison for the petitioners has contended that the maximum penalty prescribed for an offence should never be imposed in the case of a first offence and has referred me to the case of *Cheah Boon Hean v. Reg.*[1]

I do not think this Court can so limit the discretion given by the law as to say that a maximum fine should never be imposed for a first offence. It is quite true that it is not as a rule imposed in such a case but, if the circumstances justify it, then this Court, I conceive, will not interfere. In this case, the Magistrate in his grounds of judgment, has shown that he considered the matter judicially and reasonably. He states that he has regularly imposed the maximum fine of $25/- and it has not proved a sufficient deterrent. In these circumstances it would be quite wrong for me to say that he was wrong in imposing the maximum fine. In fact, however, he did not do so and Mr. Morrison misunderstood the order made.

But the Magistrate has made an error in imposing one fine jointly for two separate offences and I think reading section 322 (1) with section 310 it is competent for me to correct that and to alter his order into a fine of $12.50 for each offence. *Opium Farmer v. Chua Ah Tong*[2].

The next point taken by the petitioners was that they had been convicted on two separate charges in respect of one act.

I think the section under which these petitioners were charged does authorise the prosecution of an